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## RECENT DECISIONS

CRIMINAL LAW—ROBBERY—REGAINING POSSESSION OF MONEY LOST IN GAMBLING.—The appellant and the prosecuting witness were gambling, and the appellant lost some money through the fraud of the prosecuting witness in reducing the number of cards in the deck. While the money was lying on the floor, the appellant forcibly took the money which he had lost. The appellant was afterwards indicted for robbery. *Held*, the appellant is not guilty. *Temple v. State* (Tex.), 215 S. W. 965.

In robbery or larceny there must be an intent on the part of the accused to take the property of another person. Where a person takes property, acting under a *bona fide* belief that the property is his own, and that in recovering it he is only reclaiming his own property, this does not constitute the crime of robbery or larceny, because there is no *animus furandi*. *People v. Hughes*, 11 Utah 100, 39 Pac. 492; *State v. Wasson*, 126 Iowa 320, 101 N. W. 1125. The necessity for the presence of this element of adverse ownership is shown by the numerous failures of indictments where the element is not alleged. *People v. Vice*, 21 Cal. 345; *Barnes v. State*, 9 Tex. App. 128. Where there is doubt and dispute as to the ownership of the property, the question of the *bona fide* belief of the defendant in his ownership of the property should be submitted to the jury. *Carr v. State*, 55 Tex. Cr. App. 352, 116 S. W. 591.

Where two people are playing and betting at cards, it has been held that the loser is not guilty of robbery by forcibly and violently compelling the winner to surrender the money won. This view is based upon the ground that, since gambling is itself illegal, the winner does not acquire title to the winnings, and hence the loser is justified in recovering his own money. *Gant v. State*, 115 Ga. 205, 41 S. E. 698; *Thompson v. Commonwealth* (Ky.), 18 S. W. 1022; *Sikes v. Commonwealth* (Ky.), 34 S. W. 902. But where a person not only takes his own property from another by force and violence, but, along with his own property, he takes property belonging to another, he is guilty of robbery. *Gant v. State*, *supra*. See *State v. Carroll*, 160 Mo. 368, 60 S. W. 1087.

On the other hand, it has been held that where one person has won money from another at gaming, and the money has been paid to the winner, the loser, by retaking the money forcibly and violently, becomes guilty of robbery. *Blain v. State*, 34 Tex. Cr. App. 448, 31 S. W. 368; *Carroll v. State*, 42 Tex. Cr. App. 30, 57 S. W. 99. The principle relied upon in these cases is that both parties are equally guilty of gambling and the law looks at them in the same light. When the loser has voluntarily and peaceably paid over his money to the winner, then the winner becomes, in law, the owner of the money. Hence any attempt to regain the money by force would be robbery.

The instant case is distinguished from the case of *Blain v. State*, *supra*,

and others along the same line, in that there is an element of fraud in the instant case which is not present in that line of cases. In the instant case the prosecutor won the money by fraud in changing the number of cards; consequently, having obtained the property under false pretenses, he could not claim title against the true owner.

**DIVORCE—DESERTION—ACQUIESCENCE SHOWN BY FILING LIBEL FOR DIVORCE ON THE GROUND OF CRUELTY.**—The plaintiff's wife deserted him, and within a year after the said desertion, he filed and served upon her a libel for divorce charging cruelty. This case was dismissed by consent. Subsequently, more than three years after the said desertion, the plaintiff asked for a divorce on the ground of desertion. *Held*, the divorce should not be granted. *Moody v. Moody* (Me.), 108 Atl. 849.

Desertion was not mentioned as a cause for divorce either a *vinculo matrimonii* or a *mensa et thoro* in Viner's Abridgment. 15 Vin. Abr. 261. But desertion is now generally recognized as a cause for divorce under modern statutes. For a summary of the statutes of the various States, see note, 65 Am. Dec. 708. And since these statutes are in derogation of the common law, no divorce can be granted except for a cause expressly allowed by these statutes. *Stewart v. Stewart*, 78 Me. 548, 7 Atl. 473, 57 Am. Rep. 822. See *Maddox v. Maddox*, 189 Ill. 152, 59 N. E. 599, 52 L. R. A. 628, 82 Am. St. Rep. 431.

It has been judicially determined that the three elements of desertion are (1) that cohabitation has ceased, (2) that the defendant intended to desert, and (3) that the separation was against the will of the complainant. *Rose v. Rose*, 50 Mich. 92, 14 N. W. 711; *Sergeant v. Sergeant*, 33 N. J. Eq. 204. All of these elements are necessary. *Rose v. Rose*, *supra*. It is upon the third point that the instant case was decided.

It is a well settled principle of law that separation by mutual consent of the parties is not desertion. *Herold v. Herold*, 47 N. J. Eq. 210, 20 Atl. 375, 9 L. R. A. 696; *Ingersoll v. Ingersoll*, 49 Pa. St. 249. See *Latham v. Latham*, 30 Gratt. (Va.) 307. Of course it follows that the consent or acquiescence of the party deserted has the same effect. *Lea v. Lea*, 8 Allen (Mass.) 418. This consent does not have to be express, but may be implied. See *Gray v. Gray*, 15 Ala. 779.

The deserted spouse's consent may be shown by an actual agreement to live apart. *Secor v. Secor*, 1 McArth. (D. C.) 630. Nor can the husband secure a divorce on the ground of desertion where his wife leaves him without any objection on his part and in accordance with his desires. *Jones v. Jones*, 13 Ala. 145. Nor can a divorce be secured when the deserted party takes steps to prevent a renewal of the marriage relation in order to allow the statutory period to elapse. *McGean v. McGean*, 63 N. J. Eq. 285, 49 Atl. 1083. Again, though there was an actual desertion by one spouse, any subsequent overt act brought about within the statutory period by the deserted spouse, such as bringing a suit for divorce, will show consent to the separation and will defeat a later suit for divorce on the ground of desertion. *Ford v. Ford*, 143 Mass. 577, 10 N. E. 474. The continuity of desertion